IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 181 of 1998.

Judgement reserved on: 20.9.2007.

Date of decision: 22.11.2007.

Smt. Nirmala Devi & ors. ….. Appellants.

Vs.

The Land Acquisition Collector …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. Ajay Kumar, Advocate.

For the Respondents : Mr. M.S.Chandel, Advocate General with Mr. M.L.Chauhan, Addl. Advocate General.

Kuldip Singh, Judge.

This appeal has been directed against the award, dated 20.10.1997, passed by the learned District Judge, Shimla, in land reference No. 6-S/4 of 1982.

2. The State of Himachal Pradesh issued notification, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) for acquiring land, comprised in khasra Nos. 470, 470/1, 470/2 and 470/3, situate in Station Ward, Bara Shimla and the notification was published in Rajpatra, on 6.8.1977. The Land Acquisition Collector (for short, the Collector), vide award, dated 27.11.1981 assessed the

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Whether the reporters of the local papers may be allowed to see the Judgment?

market value of the acquired land at Rs.55/- per square yard and the area of the acquired property was held to be 984.1 square yards. The land owners were not satisfied with the award made by the Collector, they filed reference petition, under Section 18 of the Act. In the reference petition, the following issues were framed:

1. Whether the petitioners filed any objections in response to notice under Section 9 of the Land Acquisition Act and if not, to what effect? OPP.

2. Whether the land acquired by the Collector was 1007 Sq. yards and not 984.1 Sq. yards? OPP.

3. Whether the compensation awarded by the Land Acquisition Collector in respect of the acquired land is inadequate and if so what was the market value of this land at the relevant time? OPP.

4. Whether there were any dangas on the land under reference and if so, what was their value at the relevant time? OPP.

5. Whether this acquisition has frustrated the scheme of the petitioners to construct a Cinema House on the land near the land under reference as alleged and if so what was the loss so incurred and to what effect? OPP.

6. Relief.

3. The learned District Judge assessed the market value of the acquired land at Rs.500/- per sq. yard. On the excess compensation, the learned District Judge allowed other statutory

payments and interests as per impugned award, dated 20.10.1997. The learned District Judge held area of the acquired land 984.1 Sq. yards.

4. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has submitted that the appellants are entitled to Rs.20,00,000/- compensation for the acquired land alongwith other statutory payments and interests. He has submitted that reference court has misread and misconstrued the evidence on record and, therefore, assessed the market value of the land on the lower side. The area of the acquired land has been wrongly held 984.1 Sq. yards. The reference court has ignored vital oral and documentary evidence. The learned Advocate General has submitted that learned District Judge has considered the material on record properly and legally and has awarded just compensation to the land owners, who are not entitled to further enhancement of compensation.

5. PW 1 Brij Lal Gupta, Superintendent, Municipal Corporation, Shimla has placed on record lease-deed Ex. PW 1/A executed in between the municipal corporation, Shimla and Rama Nand of M/s Rama Nand Ram Gopal. He has stated that adjoining to the lease land is the land of land-owners (appellants) known as “Ingele-dene Estate”. The plot of the land owners is levelled while the land under the lease deed dated 16.1.1976 of the corporation is hilly. In cross examination, he has stated that the land was leased to the land owners for construction of Cinema Hall.

6. PW 2 Madan Lal Malhotra, property dealer has stated that he has seen the acquired land. This land is at a distance of 200 yards from Frankline house estate. The Frankline House Estate was sold through him in the year 1978-79. A part of this estate was sold to Chandermani Kumbhkarni through him. He offered Rs.500/- per sq. yard to the land owners for the acquired land, but they declined as they were constructing a Cinema House over it. In cross examination, he has stated that the offer was made orally. PW 3 Jaswant Rai Sood has stated that he is running Mayur Hotel at Shimla, which is at a distance of 50 yards from the acquired land. He purchased site of the Mayur Hotel in the year 1977 at the rate of Rs. 400/- per sq. yard, vide registered sale deed, copy Ex. PW 3/A. The site of the Mayur Hotel at the time of purchase was hilly and undeveloped. The transaction was settled about three or four months prior to the execution of the sale deed. Before purchasing the site of Mayur Hotel, he approached the land owners (appellants) to sell the acquired land and at that time he was told that the area was 1000 sq. yards and he offered to pay Rs.8,00,000/- as price thereof, as it was fully developed plot.

7. PW 5 Moti Lal Aukta has stated that he knew the petitioners. He had seen the land under reference in December, 1977. He intended to purchase this land alongwith Shiv Charan Dass for constructing a hotel. He offered to purchase this land at the rate of Rs.800/- per sq. yard. The petitioners refused to sell this land and told him that he himself intended to construct a Cinema Hall on this land. He, therefore, purchased 951 sq. yards land from Mr. Ram

Krishan and sons in Bantony Estate, Shimla and an agreement dated 17.2.1978 to this effect was executed with Ram Krishan, a copy of such agreement is Ex. PW 5/A. He purchased the land in Bantony Estate at Rs. 450/- per sq. yard. The acquired land is plain and developed, whereas the land which he purchased is steep and undeveloped. He paid Rs.3,00,000/- in advance as part payment of price of the land in Bantony Estate. The sale deed could not be executed in respect of Bantony Estate due to enforcement of Town and Country Planning Act.

8. PW 6 Surjit Singh, Architect has stated that he has seen the acquired land. It is table land and he prepared map of this land, which is Ex. PW 6/A. This land has got eight retaining walls. He has calculated the cost of retaining walls on the basis of HPPWD schedule of rates. The valuation report prepared by him is Ex. PW 6/B. This land is about 100 yards from Mayur hotel. Frankline Estate is adjacent to acquired land just across the Nalla. In cross examination, he has stated that he applied 1968 HPPWD schedule of rates.

9. PW 7 Chandermani Kumbhkarni, Superintending Engineer has stated that in March 1978, he purchased land in Station Ward near Jodha Niwas for a consideration of Rs. 30,000/- measuring 155 sq. yards, vide registered sale deed, a copy Ex. PW 7/A. He has seen the acquired land which is 100 meters away from the land purchased by him. The acquired land is better situated from commercial point of view and as such is more valuable than the land purchased by him. In cross examination, he has stated that his land is

at a distance of five or seven minutes walk from the Ridge Shimla. His land is situated in Frankline Estate near Jodha Niwas.

10. PW 8 Braham Dutt Kashyap, Manager, HPFC has stated that Mayur Hotel is mortgaged with H.P.F.C. and the title deeds are in custody of H.P.F.C., which he brought in the court. Ex. PW 3/A is the photo copy of the title deed, which he brought in the court in original. PW 10 Rama Nand petitioner has stated that his father had purchased the acquired land in court auction in the year 1957. Ex. PW 10/A is the photo copy of the original title deed, which he brought in the court. On the acquired land there was building of grammar house school and sales tax office, which were got vacated and thereafter the building was demolished for constructing Cinema Hall. The acquired land was developed by constructing retaining walls. The permission was granted for the construction of Cinema and an attested copy of no objection certificate is Ex. PW 10/B. After this, the Architect advised them that the land was not sufficient for constructing a big Cinema, on this they applied to the municipal corporation to give them adjoining land on lease for this purpose. The Corporation accordingly gave them the said land on lease, a copy of lease deed is Ex. PW 1/A. On this they had incurred expenditure of Rs. 30,000/-. Mayur Hotel is at a distance of about 50 yards from the acquired land. Jaswant Rai in 1977 offered to purchase the acquired land at Rs.8,00,000/-, but they refused to sell it as they intended to construct a Cinema Hall. Moti Lal Aukta and Madan Lal Malhotra had also offered to purchase this land in the year 1977 at Rs. 800/- per sq. yard. The acquired land is ideally located for commercial purposes

and in the year 1977 its market price was Rs.1000/- per sq. yard. He has spent Rs.2,00,000/- on construction of retaining walls. The adjoining land was taken on lease for 95 years from the corporation for constructing a Cinema. In the cross examination, he has denied the suggestion that no offers to purchase the acquired land were made by Jaswant Rai, Moti Lal Aukta and Madan Lal Malhotra.

11. RW 1 I.C. Malhotra, Land Acquisition Officer has stated about serving of notice to the petitioners and disposal thereof. RW 2 Tulsi Ram, Patwari has stated that he took the measurements of land under reference, which was found to be 984.1 sq. yards. He had worked out the price of this land on the basis of one year sale price from 5.8.1976 to 6.8.1977. In cross examination, he has stated that plot is at a distance of three or four minutes walk from Ritz Cinema.

12. The learned District Judge while deciding issue No. 2 has held that area of the acquired land is 984.1 sq. yards and not 1007 sq. yards, as claimed by the land owners. In returning the finding that the area of the acquired land is 984.1 sq. yards the learned District Judge has relied on the statement of RW 2 Tulsi Ram, Patwari, who has simply stated that at the time of measurement of the land under reference, the area was found to be 984.1 sq. yards. He has not stated that the measurement carried out by him was accepted by the land owners. The land owners have placed on record Ex. PW 10/A, copy of sale certificate wherein area of the acquired land has been recorded 1007 sq. yards. It is not the case of the respondents that area of the acquired land in Ex.PW 10/A has been incorrectly recorded. In view of sale certificate Ex. PW 10/A, the statement of

RW 2 Tulsi Ram, Patwari cannot be accepted that the area of the acquired land was found to be 984.1 sq. yards by him at the time of measurement. It is, therefore, held that area of the acquired land is 1007 sq. yards and not 984.1 sq. yards.

13. The notification, under Section 4 of the Act, was published in Rajpatra on 6.8.1977, therefore, relevant date for assessing the market value of the acquired land is the date of notification under Section 4 of the Act. The lease deed Ex. PW 1/A was executed by Municipal Corporation, Shimla in favour of Rama Nand of M/s Rama Nand Ram Gopal of a plot for 95 years at the rate of Rs.30/- per sq. yard. PW 1 Brij Lal Gupta, Superintendent, Municipal Corporation, Shimla has stated that the plot of the land owners is level while the land leased by the corporation to the land owners is hilly.

14. PW 3 Jaswant Rai Sood has stated that before purchasing the land, vide sale deed Ex. PW 3/A dated 27.8.1977, he wanted to purchase the acquired land for a consideration of Rs. 8,00,000/-, but no agreement to this effect has been placed on record nor PW 3 has stated why the sale of the acquired land in his favour did not materialize.

15. PW 5 Moti Lal Aukta has stated that he had seen the acquired land in December, 1977 and he wanted to purchase this land at the rate of Rs. 800/- per sq. yard, but the petitioner refused to sell the land to him as he wanted to construct Cinema Hall on this land. PW 5 Moti Lal Aukta has placed on record agreement Ex. PW 5/A, vide which he agreed to purchase 951 Sq. yards land from M/s

Ram Krishan at Rs. 450/- per sq. yard. No sale deed on the basis of agreement Ex. PW 5/A has been proved on record, therefore, agreement Ex. PW 5/A cannot be relied for assessing the market value of the acquired land. The oral statements of PW 3 Jaswant Rai and PW 5 Moti Lal Aukta are not sufficient to the effect that they offered to purchase the acquired land in the year 1977 at the rate of Rs. 800/- per sq. yard. As per the case of appellants, they intended to construct Cinema Hall on acquired land, therefore, land in question was not meant for sale. In these circumstances, how PW 3 Jaswant Rai and PW 5 Moti Lal Aukta contacted appellants for purchasing the acquired land, has not been explained. Moreover, according to appellants they refused to sell the acquired land to PW 3 and PW 5, as they wanted to construct Cinema Hall on the acquired land and not on account of sale consideration allegedly offered by them for purchasing the acquired land.

16. PW 6 Surjit Singh has placed on record plan Ex. PW 6/A and has stated that acquired land has eight retaining walls. The statement of Surjit Singh is not relevant for assessing the market value of the acquired land inasmuch as the market value of the acquired land is to be assessed as a whole and not in parts, i.e. the value of the land plus cost of retaining walls. PW 7 has proved sale deed Ex. PW 7/A, vide which he purchased 155 sq. yards land in Station Ward, Shimla, for a consideration of Rs. 30,000/-. He has not stated that whether before purchasing land vide sale deed Ex. PW 7/A, he had some talk with the land owners for purchasing the

acquired land nor he has stated about the market value of the acquired land.

17. PW 9 Gian Chand has proved sale deed Ex. PW 9/A of land measuring 211 sq. yards for a consideration of Rs. 200/- per sq. yard. This land was purchased by him in the year 1978 near Kamla Nehru Hospital, Station Ward, Chhota Shimla. He has stated that the land acquired is superior so far as the location is concerned. He has, however, not stated what was the market value of the acquired land at the time of acquisition. PW 10 Rama Nand has supported his case in general. He has stated that in the year 1977, Jaswant Rai PW 3 offered to purchase the acquired land for Rs. 8,00,000/-. The acquired land was not sold to him as they wanted to construct Cinema Hall, but this is not so stated by PW 3 Jaswant Rai that PW 10 refused to sell the land as he wanted to construct cinema hall on the acquired land. PW 10 Rama Nand has stated that PW 5 Moti Lal Aukta and PW 2 Madan Lal Malhotra wanted to purchase the acquired land in the year 1977 at Rs. 800/- per sq. yard, but PW 2 Madan Lal has contradicted PW 10 Rama Nand, when he has stated that he wanted to purchase the land at Rs. 500/- per sq. yard. There is nothing on record that Moti Lal Aukta wanted to purchase the acquired land in December, 1977 at the rate of Rs. 800/- per sq. yard except bald statements of PW 5 Moti Lal Aukta and PW 10 Rama Nand, which cannot be relied.

18. The learned Districted Judge visited the spot on 6.4.1984 and as per his spot inspection note the acquired land is at a distance of 200 yards from Mayur Hotel and about 300 yards from

Ridge. It is on the right side of the motorable road from Ridge towards Jodha Niwas Estate. The entire area is plain surrounded by retaining walls on all sides. A small nalla divides it from residential area of Jodha Niwas Estate which appears to be thinckly populated. The view from the site is quite commanding towards plain and main part of the Shimla town. The land which is said to have been taken by the petitioner on lease is below the site which is steep and undeveloped.

19. The sale deed Ex. PW 3/A is of the site of Mayur Hotel, which is at a distance of 200 yards from the acquired land as per spot inspection report of learned District Judge. In the sale deed Ex. PW 3/A, the land was sold at the rate of 400/- per sq. yard. In a city and that too in hill area, distance of 200 yards matters. The sale deed Ex. PW 3/A cannot be relied for assessing the market value of the acquired land. In agreement Ex. PW 5/A, which pertains to property of Bantony Estate, the land was agreed to be sold at Rs. 450/- per sq. yard, but no sale deed on the basis of agreement Ex. PW 5/A has been placed on record. In sale deed Ex. PW 7/A, the land measuring 155.5 sq. yards was sold for Rs. 30,000/- i.e. at the rate of about Rs.193/- per square yard, but PW 7 has not stated anything about the market value of the acquired land, therefore, the sale deed Ex. PW 7/A is also of no help for assessing the market value of the acquired land. Similarly, PW 9 Gian Chand while proving the sale deed Ex. PW 9/A has not stated about the market value of the acquired land.

20. Now only document remains on record is the lease deed Ex. PW 1/A dated 16.1.1978. No doubt notification, under Section 4 of the Act was published on 6.8.1977 and the lease deed Ex. PW 1/A is dated 16.1.1978. There is nothing on record to show that the lease deed Ex. PW 1/A was executed in order to enhance the market value of the acquired land. The lease deed Ex. PW 1/A is a genuine document. In **Chimanlal Hargovinddas** vs. **Special Land Acquisition Officer, Poona and another** 1988(3)SCC 751, it has been held that even post-notification instances can be taken into account (1) if they are very proximate (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. In **State of Uttar Pradesh** vs. **Major Jitendra Kumar and others** 1982 (2) SCC 382, the Hon'ble Supreme Court has accepted the sale deed, which was executed three years after notification under Section 4 of the Act. The lease deed Ex. PW 1/A has been executed about 5½ months after the notification, under Section 4 of the Act. Therefore, the lease deed dated 16.1.1978 can be relied for assessing the market value of the acquired land. In fact, lease deed has been relied by the learned District Judge for assessing the market value of the acquired land. As per lease deed Ex. PW 1/A, the Municipal Corporation, Shimla has leased out a plot to the appellants for 95 years at the rate of Rs.30/- per sq. yard which is situated just below the acquired land. The learned District Judge in the inspection report has observed that leased out land is steep and undeveloped and the acquired land is plain, surrounded by retaining

walls on all sides. The learned District Judge has applied multiplier of 16 years purchase for assessing the market value of the acquired land on the basis of rent fixed in lease deed Ex. PW 1/A. He has thus came to the conclusion that market value of the leased property was Rs. 480/- per sq. yard in January 1978 when the lease was created. The acquired land was better in comparison to leased land, therefore, he assessed the market value of the acquired land at Rs. 500/- per sq. yard at the time of issuance of the notification, under Section 4 of the Act. In **The Secretary of State for India in Council** and **Shanmugaraya Mudaliar and others** I.L.R. (Vol. 16) Madras 369 (Privy Council); **Sub-Collector, Rajahmundry** vs. **Pillarisetti Parthasarthi Naidu and another** AIR 1942 Madras 739; **Radha Charan** vs. **Secretary of State** AIR 1943 Allahabad 238; **Revenue Divisional Officer, Trichinopoly** vs. **S. Varadachari** AIR 1944 Madras 271, multiplier of 20 to 30 years purchase has been applied for assessing the market value of acquired land on the basis of lease rent/ income. In V.G. Ramchandran's Law of Land Acquisition and Compensation, 8th Edition at page-776 it has been commented that this valuation has to be increased to at least 30 years' purchase in modern times of price spiral. In **Krishna Yachendra Bahadurvaru** vs. **The special Land Acquisition Officer, City Improvement Trust Board, Bangalore and others** AIR 1979 SC 869 the Hon'ble Supreme Court has held that the estimation of the market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess.

21. The learned District Judge has applied 16 years purchase for assessing the market value of the acquired land on the basis of rent fixed in lease deed Ex. PW 1/A and has assessed the market value of the lease land at the time of notification, under Section 4 of the Act at Rs. 480/- sq. yard and he has also held that since the acquired land is better in comparison to lease land, therefore, he assessed the market value of the acquired land at Rs. 500/- per sq. yard. In view of law laid down in above judgements, the learned District Judge has erred in assessing the market value of the acquired land on lower side on the basis of rent fixed in lease deed Ex. PW 1/A after applying 16 years purchase instead of at least 20 years purchase.

22. It has come on record that the acquired land is plain, whereas the land covered by lease deed Ex. PW 1/A is steep and undeveloped. The acquired land is in heart of Shimla and abuts the road and has high potential value, which is also to be taken into consideration as per law laid down in **Smt. Kausalya Devi Bogra and others, etc.** vs. **Land Acquisition Officer, Aurangabad and another** AIR 1984 SC 892. In these circumstances, it can be safely inferred that the acquired land could have been leased out at Rs. 35/- per sq. yard at the time of notification under Section 4 of the Act. Therefore, applying 20 years purchase, the market value of the acquired land comes at Rs. 700/- per sq. yard at the time of notification under Section 4 of the Act, and hence the market value of the acquired land is assessed at Rs. 700/- per sq. yard at the time of notification, under Section 4 of the Act. The appellants under

Section 23 (1-A) of the Act are also entitled to amount at the rate of 12% per annum on market value from the date of publication of notification, under Section 4 of the Act, i.e. 6.8.1977 to the date of award of the Collector, i.e. 27.11.1981. The appellants are further entitled to compulsory acquisition charges at the rate of 30% on the market value. The appellants are further entitled to interest for one year at the rate of 9% per annum on the excess compensation from 6.8.1977 to 6.8.1978 and thereafter at the rate of 15% per annum till payment. The impugned award thus requires modification.

23. The result of the above discussion, the appeal is allowed, award dated 20.10.1997, passed by the learned District Judge, Shimla, in Land Reference No. 6-S/4 of 1982 is modified, the area of acquired land is held to be 1007 square yards comprised in khasra Nos. 470, 470/1, 470/2 and 470/3, situate in Station Ward, Bara Shimla, the market value of the acquired land is held Rs. 700/- per square yard, the appellants under Section 23(1-A) of the Act are further entitled to amount at the rate of 12% per annum on market value of the acquired land from the date of publication of notification under Section 4 of the Act, i.e. 6.8.1977 to the date of award of Collector i.e. 27.11.1981. The appellants are also entitled to compulsory acquisition charges at the rate of 30% on the market value of the acquired land and interest for one year at the rate of 9% per annum on excess compensation from 6.8.1977 to 6.8.1978 and thereafter at the rate of 15% per annum till payment. No costs.

November 22, 2007 **(Kuldip Singh)**
(*Hem*) **Judge.**